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upheld an Oregon statute prohibiting the working of females in laundries more than ten hours each day. This case, like each of the other four, was decided after considering the class of persons protected, the nature of their occupations, the effect of such a law, and making these facts the underlying reason for their decisions. In none of them was so much left to the discretion of the State legislature as was left in *McClellan v. Arkansas*.

The importance of the decision under consideration is, therefore, patent. In its decision the court acted on a law, the validity and the results of which have been much questioned. It did not adopt the reasoning by which like statutes in the State courts were declared constitutional. The decision indicates that the states are to be given a broader field to legislate in under the police power than they have had up to the present time.

It is undeniably true that the legal tendency of the last three hundred years has been away from police power, and the statutes of Elizabeth regulating the wages of laborers seem as foreign to us as the acts of Richard II. declaring that no servant should play tennis or football. 5 *Elizabeth ch. 4 St. 12 Rich. 11. C. 6*. Equally true, however, is the fact that the movement of judicial decisions during the last quarter century has been toward the extension of this power. We may, therefore, reiterate with confidence in its truth the opinion voiced twenty years ago by Ambassador Bryce in a comment on the Granger cases: "I do not presume to doubt the correctness of these decisions, but they evidently present a different view of the sacredness of private rights, and of the powers of the legislature from that entered into by Chief Justice Marshall and his contemporaries." *American Commonwealth*, Vol. 2, p. 167.

THIRD PARTY SUING ON CONTRACT MADE BY ANOTHER.

In the case of *Charles Eades v. Atlantic, Gulf and Pacific Co.*, No. 6262, the Court of the First Instance for the District of Manila was called upon to determine whether a third party could sue a promisee on a contract made with the promisor (primarily at least) for the promisor's benefit alone. The defendant company was under contract with the City of Manila to install a sewerage system. The plaintiff was a fireman employed in the fire department of the city as a driver. While responding to an alarm he was thrown from his wagon. He alleges that owing

to the condition in which the street was left by the contracting company, he was injured and sued it, with an averment of liability only such "as arises under and by virtue of such contract."

Decision was rendered for the defendant company based principally on Art. 1257 of the Civil Code, which reads as follows: "Contracts shall only be valid between the parties who execute them and their heirs.* * * Should the contract contain any stipulation in favor of a third party, he may demand its fulfilment, provided he has given notice of its acceptance to the person bound, before it may be revoked;" following Art. 1165 of the French (Napoleonic) Code, "Contracts only produce effects between the contracting parties. They do not affect third parties, and do not benefit them, except in the case provided by Art. 1121."

This, continues the court, is the law in Germany, Austria, Italy, Portugal, Holland, Switzerland, and Spanish American countries, following corresponding provisions in their respective codes.

Then, perhaps erroneously, the court says that this, too, is the prevailing doctrine of the American Law. The law on this subject both in England and in the United States is and has been somewhat anomalous.

In England, originally, a third party could enforce a contract against a promisor, if it was supported by a valuable consideration, if it was a promise not under seal, and if it was intended for the benefit of the third person, at least if the third person was a near relative. *Dutton v. Poole*, 2 Levin 216; 1 Vent. 318. (Why relationship was such an important fact seems at first blush difficult to understand). Later English cases held that under no circumstances could the third party enforce a contract to which he was not a party. *Price v. Easton*, 4 B. & Adolph. 433.

The weight of modern authority seems to hold that the third party may recover from the promisor if the promise is upon consideration, not under seal made primarily for the benefit of the third party. *Hendrick v. Lindsay*, 93 U. S. 143; *Buckley v. Gray*, 110 Cal. 339; *Lawrence v. Oglesby*, 178 Ill., 122. And it has been so held in at least nineteen states. On this subject the leading case is *Lawrence v. Fox*, 20 N. Y. 268. The courts have, however, shown a tendency not to extend the rule. *Montgomery v. Rief*, 15 Utah 495.

The courts which allow the third party to enforce the contract

against the promisor, do so only when the promise was intended primarily to benefit him. If the promise was intended for the promisee's benefit, and the benefit to the third party is merely incidental, in such case the third party cannot maintain an action against the promisor. *Treat v. Stanton*, 14 Conn., 445; *Crandall v. Page*, 154 Ill., 627. Some courts even go so far as to hold that the third party can only sue when he is the sole beneficiary. *German S. Bk. v. N. W. Water and L. Co.*, 104 Ia. 717.

A minority of our courts have held that a contract between two persons for the benefit of a third person confers no right of action upon such third person as against the promisor. *Morgan v. The Randolph and Clowes Co.*, 73 Conn., 396; *Williamson v. McGrath*, 180 Mass. 55; *Linneman v. Moross Estate*, 98 Mich. 178; *Coffee v. Shuler*, 112 N. C., 622.

The right is one, however, usually recognized in equity. *Palm-er v. Bray*, 136 Mich. 85; *Zell's Appeal*, 111 Pa. St. 532; *O'Connor Adm'r v. O'Connor*, 88 Tenn., 76.

We frankly confess that we see no reason why, in these days of enlightenment, when such a pronounced tendency exists to look no longer to the form, but to the substance, we confess we see no reason why, in any contingency, the third party should not be entitled to sue on a contract made for his benefit whether primarily or incidentally; giving a bond against further liability to the promisor. In the case at bar, however, a strange feature was present, to wit: A municipal employee suing a third party for injuries received while he was acting for the municipality on its governmental side. The circumstances of the suit, however, were such that it was not necessary for the court to consider this question, and it went by entirely unmentioned. *H. F.*

MOTIVE AS AN ELEMENT OF TORT.

In 1905 Mr. James Barr Ames, writing on the increasing importance of motive as an element in torts, suggested a case in which a man should start a shop, not for the sake of profit, but regardless of loss for the sole purpose of driving another shop-keeper out of business and with the intention of retiring upon the accomplishment of his malevolent purpose. Such a case, he declared, was not likely to arise, but he pointed out that, according to the trend of many modern decisions, such a defendant would be held liable. 18 *Harvard Law Review*, 420.